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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKET SECTION

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Joint Application of)
)
DELTA AIR LINES, INC.,)
SWISSAIR, SWISS AIR TRANSPORT)
COMPANY, LTD.,)
SABENA S.A., SABENA BELGIAN WORLD)
AIRLINES, and)
AUSTRIAN AIRLINES, ÖSTERREICHISCHE)
LUFTVERKEHRS AG)
)
For approval of and antitrust immunity for)
Alliance Agreements pursuant to 49 U.S.C.)
§§ 41308 and 41309.)

Docket OST-95-618 - 44

ANSWER OF JOINT APPLICANTS TO
COMMENTS ON ORDER TO SHOW CAUSE

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I. INTRODUCTION

Delta Air Lines, Inc. ("Delta"), Swissair, Swiss Air Transport Co., Ltd. ("Swissair"), Sabena S.A., Sabena Belgian World Airlines ("Sabena") and Austrian Airlines, Österreichische Luftverkehrs AG ("Austrian"), and their respective subsidiaries (collectively, "the Joint Applicants") hereby submit this Joint Answer to the comments on the Department's Show Cause Order (Order 96-5-12) filed by the Department of Justice ("DOJ"), the International Air Transport Association ("IATA"), and United Air Lines, Inc. ("United").

None of the commentators opposes the Department's decision to approve and immunize the Alliance, or challenges the Department's findings that the Alliance is **procompetitive** and would benefit the traveling public. DOJ recommends that the Department withhold the grant of immunity from coordination activities with respect to certain local fare categories in four New York city-pairs (New York-Brussels/Zurich/Geneva/Vienna). DOJ's arguments are unsupported by facts, based on flawed premises and faulty logic, and should be rejected. The essence of DOJ's position is that because the Alliance partners are already serving the routes between New York and their respective home countries, no new competitor will serve these routes. DOJ asserts three points in support of this premise, all of which are erroneous:

1. Delta's presence in New York somehow gives it a unique advantage in serving these city-pairs. This is not true. Delta ranks either fourth or fifth (depending on whether the measure is flights or seats) among the five largest U.S. carriers that serve the New York gateways.
2. New entry is unlikely on thin, long haul international routes. This is also wrong. Furthermore, significant number of international routes with fewer passengers receive nonstop service from more than one carrier, and many new, low cost carriers have initiated international service at New York and elsewhere in the past few years. Further, American already competes with nonstop service on two of the routes at issue, and American and three other carriers have domestic feeder systems at the New York gateways.

3. The Alliance would be able to extract a price premium from time sensitive passengers flying on nonstop service. The only evidence provided in support of this statement pertains to large domestic hub city-pairs that are served by numerous nonstop daily flights that are available to meet the needs of any time-sensitive traveler. This evidence has no applicability to international routes such as the ones at issue here where there are only one or two nonstop flights per day and the vast majority of the available service is **onestop** or connecting service.

The Department recognized in its Show Cause Order that competition is intense between New York and Europe, and the formation of the Alliance will not change the competitive dynamics. Connecting carriers strongly discipline the market, and New York's attraction, as by far the largest U.S. international gateway, offers an enormous incentive for immediate new entry in response to supra competitive behavior. The Show Cause Order considered DOJ's position and, recognizing these market factors, correctly concluded that excluding the New York-Europe city-pairs from the grant of immunity was unnecessary. As discussed more fully below, DOJ has presented nothing to justify reconsideration of the Department's findings and conclusions.

IATA opposes the proposed condition limiting the Joint Applicants' participation in IATA tariff coordination and asks the Department to eliminate the proposed IATA condition.

United's filing does not address the merits of the Show Cause Order. In fact, United expressly "takes no position with respect to the Department's tentative order". United's filing is focused entirely on a totally unrelated application for approval of an alliance between United and SAS, filed three days ago in another docket. That application has no bearing on this matter and United's comments should consequently be disregarded.

None of the comments raises any facts or issues not previously considered by the Department that would undermine the Department's reasoning in the Show Cause Order. Nor do the comments provide any basis for the Department to delay the immediate issuance of a Final Order approving and immunizing the proposed Alliance. The Department's decision to approve and immunize the Alliance is firmly supported by the facts of record, and is fully consistent with the Department's International Aviation Policy and established precedent. A Final Order affirming the Show Cause Order should be issued immediately.

II. DEPARTMENT OF JUSTICE

The DOJ does not oppose the Department's tentative decision to approve and immunize the Alliance Agreements. Indeed, DOJ acknowledges that the Alliance "does offer the potential for meaningful efficiency gains in numerous beyond-gateway (connecting) markets." DOJ Comments at 4. DOJ, however, expresses concern with the Department's determination to extend the grant of full immunity to four New York-Europe city-pairs and recommends that the Department subject the four New York-

Europe city-pairs to the same “carve-out” condition to which the Joint Applicants voluntarily agreed in respect of Atlanta-Brussels, Atlanta-Zurich and Cincinnati-Zurich.

The Department analyzed DOJ's position regarding the New York carve-out in the Show Cause Order and correctly determined that withholding immunity from the four New York-Europe markets at issue was not necessary in light of the existing competition and the likelihood of potential entry based upon the lack of entry barriers in these markets. Moreover, the Department's review of the Alliance within 18 months, in light of actual developments, will provide ample opportunity for the Department to take appropriate action. Nothing submitted by DOJ warrants a reversal of the Department's findings and conclusions to extend immunity to the New York-Europe city-pairs.

DOJ's predictive judgments are based on flawed assumptions, faulty logic, and lack relevant factual support. As shown below, two of the New York city-pairs (New York-Brussels and New York-Zurich) already have nonstop competition by a major U.S. carrier -- American Airlines. That carrier operates substantially more service at JFK than Delta. By comparison, Delta's domestic system at JFK is small (JFK is not a Delta domestic hub of significant magnitude) and there are at least four other major U.S. carriers in the New York area that have operations at least as large as, if not larger than, Delta's and that currently operate transatlantic service. Furthermore, there are a number of low cost carriers currently operating point-to-point transatlantic service at New York. This extensive existing pool of potential competitors poses a serious competitive threat that will discipline pricing by the Alliance. Moreover, in addition to potential competition, the wide array of existing nonstop and connecting service in the New York city-pairs also

effectively discipline market behavior. The so-called “evidence” submitted by DOJ to show that **onestop** and connecting service is not a substitute for nonstop service for time sensitive passengers (based on examination of major domestic hub-to-hub routes that have multiple daily nonstops) is flawed and has no applicability to the New York-Europe routes at issue here.

As the Show Cause Order indicates, the Joint Applicants and the DOJ had extensive discussions concerning the scope of the immunity carve-out. While the Joint Applicants do not believe that any carve-out is necessary to protect against anticompetitive effects, the Joint Applicants agreed not to oppose a DOJ proposal to exclude coordination activities with respect to certain fare categories involving local traffic on three hub-to-hub routes (Atlanta-Zurich, Atlanta-Brussels, and Cincinnati-Zurich). During these discussions the Joint Applicants advised DOJ that any carve-out would impose substantial costs and burdens on the transaction by undermining the Alliance carriers’ ability to coordinate pricing, sales, marketing, inventory management and the like and thereby substantially reduce planned efficiencies and consumer benefits. As a consequence, the Joint Applicants advised DOJ that the understanding reached with respect to the Atlanta and Cincinnati routes was conditioned on the absence of restrictions on antitrust immunity with respect to any additional routes, and that extending the carve-out to include the New York routes would undermine, and prevent the Joint Applicants from implementing, the Alliance. Thus, excluding the New York city-pairs would prevent the Alliance and preclude the

substantial proconsumer and procompetitive benefits that the Department's Show Cause Order correctly found would be realized."

The Department has the sole authority and discretion to approve and grant immunity to the Alliance Agreements based on its consideration of broad international transportation policy and competition objectives under 49 U.S.C. § 41308 and 41309. See, Order 96-5-26 at 20. DOJ, as a third party intervenor, has the burden of proving on the basis of substantial evidence that the Department's tentative decision to extend unconditioned immunity to the New York routes is incorrect and that the failure to exclude immunity from those routes would substantially reduce or eliminate competition. Id. at 18. DOJ has failed to meet this burden.

DOJ's recommendation should be rejected for the following reasons:

A. DOJ's Argument for a New York Carve-out is Based on a Completely Flawed and Unsupported Premise That the Magnitude of Delta's JFK Domestic Operations Gives Delta a Unique Advantage That Would Prevent Actual and Potential Competition.

DOJ's argument for a carve-out of the New York city-pairs is based on a flawed and unsupported premise that JFK is a Delta domestic hub of significant magnitude.¹¹

¹¹ It would also substantially jeopardize the "important strategic U.S. objectives in international transportation policy regarding the promotion of aviation liberalization" that the Department correctly found to be a factor in the balance supporting the inclusion of the New York markets within the grant of antitrust immunity. Order 96-5-26, page 22.

¹² DOJ expressly excluded three overlap city pairs (Washington-Geneva, Boston-Brussels and Chicago-Brussels) because they "are not supported at the U.S. end by an Alliance hub of any magnitude." DOJ Comments at 6.

DOJ has not submitted any factual evidence in support of that conclusion, because none exists. In fact, the evidence shows conclusively that Delta's operations at JFK cannot, by any reasonable measure, be considered a domestic hub of a magnitude that would impede entry. While it is true that JFK is Delta's largest international gateway, Delta's domestic operation at JFK does not constitute a hub of substantial magnitude. In fact, as shown below, it is smaller than the New York operations of other major U.S. carriers that operate transatlantic service at New York.

Exhibit 1 and Exhibit 2 attached hereto compare the domestic flights and seats operated by Delta at JFK with other major New York carriers. Delta operates only 27 daily domestic flights and 4,677 domestic seats at JFK. Delta's share of domestic flights and seats at JFK amounts to only 6% and 5%, respectively. Its share of JFK/Newark domestic flights and seats is less than 3%. Delta ranks third behind TWA and American at JFK and a distant fourth behind market leader Continental at JFK/Newark. Exhibit 1. Delta and its non-owned commuter connection partner at JFK operate a total of only 52 daily domestic flights ranking it fourth at JFK behind American (at 101 domestic flights), TWA (at 97 domestic flights), United (at 83 domestic flights). Delta is a distant fifth when Continental's Newark domestic operations (at 354 flights) are considered. Exhibit 3 compares the scope of Delta's JFK operations with operations at domestic hub airports of significant magnitude. As that Exhibit shows, the level of Delta's service at JFK pales into insignificance when compared to hub operations of significance. Delta at JFK is only a fraction of the size of true domestic hubs. It is only one-fifth the size of Continental's hub at nearby Newark.

DOJ not only incorrectly assumes that Delta has a significant domestic hub at New York but also that Delta enjoys hub dominance at New York that would impede entry in the four New York-Europe routes. Again, DOJ's position is unsupported by the facts. Delta does not dominate services at JFK, in particular, or at New York, in general.

There are several major carriers providing international service that have domestic operations at New York that are as large as, if not larger, than Delta's. See, Exhibits 1 and 2. Thus, Delta and the Delta Connection operate only 52 daily domestic flights at JFK compared to 83 flights operated by United and United Express, 97 by TWA and TWA Express, and 101 by American and American Eagle. Moreover, Continental operates a major New York hub at Newark International Airport offering 354 daily domestic flights.

Moreover, each of the other carriers offers substantial international services at New York (four of the carriers offer such service at JFK) and each offers the realistic potential for timely and substantial entry in the New York city-pairs at issue. Thus, there are at least four New York/Newark carriers with operations at least as large as Delta's that pose realistic competitive threats, and would thereby discipline prices charged by the Alliance carriers. This undisputed evidence substantiates the Department's finding in the Show Cause Order that:

Delta does not 'dominate' the share of U.S. domestic traffic coming to New York's JFK, and other carriers with such feed could pose a competitive threat. As of February 1996, Delta operated 11 percent of domestic departures and 18 percent of domestic seats. In comparison, American Airlines operated 20 percent of domestic departures and 25 percent of domestic

seats, and TWA operated 22 percent of domestic departures and 34 percent of domestic seats at JFK.

Order 96-5-26 at 25.

Furthermore, combining the operations of the three European carriers with those of Delta would not appreciably increase the carriers' share of the New York market. See, Exhibit 11.

B. DOJ Failed Properly to Take Into Account a Number of Factors That Meaningfully Discipline Competition in the New York-Europe City-Pairs.

DOJ's analysis ignores a number of key factors that meaningfully discipline competition in the four New York-Europe city-pairs.

First, DOJ ignores the fact that both New York-Brussels and New York-Zurich already have current ~~actual~~ competition by another major U.S. carrier -- American. - can operates daily nonstop service in both routes, and has a larger presence at JFK than Delta. American has the ability immediately to increase service or lower fares if the Alliance raises prices above competitive norms. The entire thrust of DOJ's analysis is focused on the reduction of nonstop competition from two carriers to one. DOJ has failed to submit any probative evidence demonstrating that the elimination of the existing limited code-share/block spaced competition between Delta and its European partners would have any effect on fares in New York-Brussels and New York-Zurich where head-to-head nonstop competition between major carriers operating separate aircraft will continue. DOJ submitted a comparison of DFW-Boston and Houston-Boston fares, concluding that

a city-pair with two competitors has a beneficial effect on price. DOJ has made no factual showing, nor can one be made, that prices would be lower if there were three instead of two carriers competing on a nonstop basis on the New York-Brussels and New York-Zurich routes. This should rule out from the outset any consideration by the Department of a carve-out with respect to New York-Brussels/Zurich,

Second, there are a number of realistic sources of potential entry in the four New York-Europe city-pairs that discipline market behavior. As discussed above, four other major carriers (Continental, TWA, American and United) provide nonstop service to Europe and have operations at New York as large as, and in some cases larger than Delta's. These carriers are a viable source of potential competition. In addition, several low cost carriers (such as American Trans Air, Tower and World) that currently operate transatlantic scheduled service from New York are also potential competitors.

Third, the realistic threat of potential entry by existing or new carriers is demonstrated by the fact that there are numerous New York-Europe city-pairs that currently receive nonstop competition by two or more carriers, that are about the same size or even smaller than the four New York-Europe routes. Exhibit 4 shows ten New York-Europe city-pairs that are about the same size as or are smaller than New York-Brussels/Geneva/Vienna/Zurich, in which there are two or more carriers providing non-stop service either directly or pursuant to a code-share arrangement. There are four city-pairs smaller than New York-Vienna and New York-Geneva, eight city-pairs smaller than New York-Brussels and, nine city-pairs smaller than New York-Zurich that have multiple competitors. Significantly, the U.S. carriers offering either directly and/or through code-

share arrangements, nonstop service in these New York-Europe markets include not only carriers that have domestic operations at New York, but also smaller carriers that do not have any domestic feeder systems at New York, such as Tower, American Trans Air, and World. These are just the existing carriers at New York. As the Department is well aware, there are several new entrant carriers that already hold certificate authority (such as Laker) or that are seeking foreign certificates (such as Vision Air) to serve U.S.-Europe markets. The existence of these existing and proposed transatlantic operators undercuts DOJ's unsubstantiated statement that low cost carriers will serve only short-haul domestic routes.

The reason why so many New York city-pairs receive nonstop service stems from the fact that the New York metropolitan area is the largest O&D traffic generating point in the United States-Europe market, as the Department found in the Show Cause Order at 25. All four New York city-pairs at issue here generate substantial amounts of local traffic, which coupled with the stimulative effect of new entry would be sufficient to support additional service.

Fourth, each of the four New York-Europe city-pairs have in the past received nonstop service by at least one other U.S. carrier. Exhibit 5.

Fifth, DOJ incorrectly ignored the disciplining effect of **onestop** connecting service in these city-pairs. As discussed in the section below, DOJ's rejection of **onestop** competition is not supported by any probative evidence. A difference of one or two hours on a 7-8 hour transatlantic journey is not significant enough (even for time sensitive travelers)

to eliminate **onestop** service as a good substitute for nonstop service. This is especially so when there are only one or, at most, two nonstop flight options competing against an array of **onestop** alternatives.

Sixth, the Open Skies agreements provide unrestricted opportunities for any U.S. carrier to enter these routes either directly or through code-share arrangements.

Thus, DOJ improperly ignored the cumulative disciplining impacts of all of the sources of actual and potential competition, including (1) American's existing nonstop service, (2) existing **onestop** connecting service, (3) the realistic threat of entry by other major carriers that have domestic feeder systems at New York, (4) the realistic threat of entry by smaller carriers that presently serve New York transatlantic routes, and (5) the enhanced potential for new entry made possible by the Open Skies agreements. The unique fact of New York's traffic generating capability and the opportunities for entry establish the complete answer to DOJ's concerns.

C. **DOJ's Economic "Evidence" Has No Validity and Does Not Justify Imposition of Restrictions on the Alliance at New York**

DOJ bases its argument that grant of immunity to the New York city-pairs would reduce competition for time sensitive nonstop passengers on three sources: an analysis of fare differentials on certain domestic long haul hub routes; an econometric "working paper" that is not in the record and was not provided to the Joint Applicants or the Department, and DOJ's conclusions from interviews with "numerous corporate travel agencies and travel managers." DOJ's economic analysis of domestic routes has no validity to the

New York-Europe markets, and the working paper and interviews, to which neither the Joint Applicants nor the Department were privy, cannot be relied on to justify the imposition of a condition on the New York routes.

1. DOJ's perfunctory economic analysis of fare differentials on certain long haul domestic routes has no applicability to the New York-Europe markets here at issue. DOJ's domestic fare analysis of Atlanta-Salt Lake City involved a major hub-to-hub domestic route. Similarly, the fare analysis of Boston-Houston and Boston-DFW involved large domestic hub airports. Even if the economic assumptions of DOJ's analysis were correct (which they are not), the underlying premise of the exercise assumes that JFK is similarly a Delta domestic hub of significant magnitude. As demonstrated above, DOJ's premise is demonstrably false. JFK simply does not compare with Delta's hubs at Atlanta, Cincinnati, Dallas/Ft. Worth, or Salt Lake City, or Continental's hubs at Houston or New York. See, Exhibit 3 and Exhibit 6.

Furthermore, DOJ's fare distribution analysis described on pages 8-12 and on Chart 1 is based on a flawed assumption. Since the O&D data used by DOJ in its analysis did not distinguish between passengers traveling on nonstop and multistop single-plane services, DOJ simply assumed that all one coupon passengers were nonstop passengers. In fact, during the time period under review by DOJ (second quarter 1995) almost half the flights operated by Delta between Atlanta and Salt Lake City were either one stop or two stop single plane flights, on which passengers traveled on a single coupon. Thus, in the westbound direction (from Atlanta to Salt Lake City) Delta operated 13 total flights, including five single plane one stops and one single plane two stop. In the eastbound direct

(from Salt Lake City to Atlanta) Delta operated a total of ten flights including three single plane one stops and one single plane two stop. The assumption that all one coupon passengers traveled on a nonstop basis completely invalidates the DOJ's analysis.

Assuming arguendo that DOJ's methodology is correct (which it is not), the DOJ's charts and tables, relating to arbitrarily selected domestic hub-to-hub routes, do not have (and DOJ has not shown them to have) any correlation to the New York-Europe city-pairs under review. The fact that certain groups of passengers (at both the low end and high end of the fare spectrum) may show a preference for nonstop service between major domestic hubs, where there are multiple daily nonstop service options to meet virtually every preferred arrival time, says nothing about passenger preferences in the New York-Europe city-pairs where there are only one or two nonstop services and a host of alternative one stop connecting services. The DOJ's charts and tables do not show that the carriers would be able to extract a fare premium on the New York routes for time-sensitive passengers. In short, at best, DOJ's charts show that business travelers prefer nonstop service when it is available at their preferred time at a competitive price. The charts say nothing about those passengers' willingness to switch to onestop/connecting service when nonstop fares are raised above competitive levels or service is reduced below competitive levels.

Moreover, DOJ's analysis is incomplete. DOJ assumes time sensitivity to relate only to elapsed travel time. But, time sensitive international business passengers are likely to be less concerned about a difference of one or two hours of elapsed travel time on a seven-eight hour international journey than about arriving or departing at a

particularly desired time. Thus, one stop or connecting service may well provide a more attractive option, particularly if the nonstop service is not competitively priced.

The only “evidence” asserted by DOJ to support its position that Delta will be able to extract a price premium from time sensitive nonstop passengers involves a conclusory statement summarizing DOJ's interviews with “numerous corporate travel agencies and travel managers.” This “evidence” is at best anecdotal and has not been tied to the particular city-pairs under review. Moreover, it does not comport with the Joint Applicants’ experience with corporate travel managers who are concerned about travel costs and frequently seek to obtain volume discounts. In any event, neither the Joint Applicants nor the Department participated in or were provided copies of the interviews, and it would be highly unfair and prejudicial to the Joint Applicants for the Department to rely on such vague, unsubstantiated, and conclusory statements.

2. The “econometric” evidence cited by DOJ cannot be accepted. The Berry, Carnall & Spiller working paper has never been published and, in any event, is not in the record.^{3/} Moreover, as DOJ itself notes, the study focused on carriers with hubs at both ends of a route where only the hub carrier offers nonstop service compared to connecting service by other carriers. As previously established, JFK is not a Delta hub of the type that the study appears to contemplate. The other economic articles cited by DOJ are

^{3/} Counsel for Delta obtained a copy of the draft working paper late on May 30, 1996. We note that the cover page contains the following disclaimer which seriously undermines its reliability: “This paper has not undergone the review accorded official NBER publications; in particular, it has not been submitted for approval by the Board of Directors. It is intended to make results of NBER research available in preliminary form to encourage discussion and suggestions for revision before final publication.”

similarly flawed. To the extent they discuss the significance of airline hubs, they assume *airport dominance* by the hub carrier: see, e.g., Borenstein, “Hubs and high fares: dominance and market power in the U.S. airline industry,” Rand Journal of Economics, Vol. 20 (Autumn 1989), pp. 344-65. Clearly in New York, where Delta accounts for only 3% of the frequencies and of the seats at the gateway airports Delta is not a dominant carrier. The conclusions in the articles are also belied by more recent events. In “The Evolution of U.S. Airline Competition,” which is cited by DOJ for the proposition that only actual entry affects pricing, the author opines that new entry is blocked on most U.S. airline routes by hub dominant carriers. DOT’s recent study of The Low Cost Airline Revolution, April 1996, which highlights the emergence of a plethora of low cost carriers that have targeted their service to the major airlines hubs, demonstrates the invalidity of the author’s conclusions. Thus, it would be inappropriate to give any weight to these non-record documents.

D. DOJ's Unreasonably Crimped View of the Likelihood of Potential Entry is Inconsistent With the Clinton Administration's International Aviation Policy

The Department’s International Aviation Policy and its successful open skies initiative is founded on the placement of maximum reliance on competition (both actual and potential) to advance consumer welfare on a global scale. As Assistant Secretary Charles Hunnicutt stated earlier this week:

[W]e are champions of liberal aviation regimes because open markets provide airlines with the greatest opportunity to respond to demand and therefore with the greatest opportunity

to produce the full range of benefits that aviation is capable of providing.^{4/}

As noted above, New York-Brussels and New York-Zurich already have nonstop competition. With respect to New York-Geneva and New York-Vienna, although there is no existing nonstop competition on those routes, as the Department correctly noted, the Open Skies agreements between the United States and Switzerland, Austria, and Belgium provide unrestricted ability and unlimited opportunities for other U.S. carriers to enter these routes at any time if the Alliance were to attempt to raise prices above competitive levels. The realistic threat that other carriers could do so in a substantial and timely fashion will discipline the Alliance behavior. There are numerous carriers that provide international service at JFK that represent a pool of potential entrants. Exhibit 10. Several of these carriers have operations larger than Delta's and some in the past have served the New York city-pairs at issue. Exhibits 1, 2 and 5.

DOJ's claim that low cost carriers without feeder systems would not likely enter the New York city-pairs was an argument previously raised by Tower and rejected by the Department in the Show Cause Order:

Tower's own service record belies this point. In spite of the Northwest-KIM alliance, both Tower and Uzbekistan Airways serve the New York-Amsterdam Market.

Order 96-5-26 at 25.

^{4/} Remarks of Charles A. Hunnicutt, Assistant Secretary of Aviation and International Affairs Before the Aero Club of Washington, D.C., May 28, 1996 at 6.

DOJ's argument that if there existed a potential new entrant "it would have entered once the open skies agreement became effective" (DOJ comments at 16) is erroneous and proves nothing. The open skies agreements are relatively new, and the ink on those agreements has hardly had time to dry. Moreover, the proper inquiry is not whether new entry has occurred prior to the formation of the Alliance, but whether new entry would occur if the Alliance were to engage in supra-competitive pricing. Order 96-5-26 at 20. As noted above, there are numerous carriers currently serving New York (several with operations more extensive than Delta's) that pose a serious competitive threat and constitute viable potential entrants in each of the New York-Europe markets under review. This threat of entry has and will continue to discipline pricing on the New York routes.

E. DOJ's Relevant Market Definition is Invalid and Inconsistent with Department Precedent.

The Department's longstanding and traditional competitive analysis of transactions of this nature focuses on three "relevant markets": (1) U.S.-Europe; (2) U.S.-country pairs; and (3) discrete city-pairs. See, Northwest-KLM, Order 92-11-27 at 14; United-Lufthansa, Order 96-5-12 at 21; Show Cause Order at 22. In addition, the Department in this case (and in United-Lufthansa) examined the impact on global competition made possible by the growth and development of competing global airline alliance networks. Id. at 19. The Department concluded that the proposed Alliance will have "a substantial pro-competitive impact" on global competition, "bringing on-line service to nearly 32,000 city-pair markets with an estimated total traffic of 21.4 million passengers. In particular the alliance will significantly increase competition and service opportunities

to many of the 6.1 million passengers in behind-and beyond-gateway markets.” Id. The Department’s country and city-pair analysis demonstrated that there would be no substantial reduction in competition justifying disapproval or withholding of immunity.^{5/}

The DOJ here urges the Department to adopt a narrow and unprecedented relevant market determination (one which has been rejected by the Department twice **before**^{6/}) involving the analysis of the competitive impact on time sensitive passengers using nonstop service between New York, on the one hand, and Brussels, Zurich, Geneva, and Vienna,” on the other hand. In support of this analysis, DOJ claims that there exists a “large group” of “time-sensitive (largely business) passengers” for whom **onestop** service is not a reasonable substitute for nonstop service. DOJ comments at 7-8. DOJ estimates that the group includes about 72,000 total annual passengers in all four New York city-pairs. DOJ glosses over the fact that the two largest New York city-pairs (New York-Brussels and New York-Zurich) already have actual, effective nonstop competition by American Airlines. DOJ also conveniently failed to identify how many of the 72,000 passengers are in the New York-Brussels/Zurich city-pairs. The Joint Applicants submit that an

^{5/} Although the Joint Applicants agreed to carve-out two Atlanta and one Cincinnati city pairs from the grant of immunity, the Joint Applicants agreement cannot be read as a determination that the Alliance would result in a substantial reduction in competition in those three city-pairs. Order 96-5-26 at 26.

^{6/} See, Order 86-7-8 1, Order 86-9-29.

^{7/} The Joint Applicants have been unable to find any precedent in DOT merger or agreement-approval cases in which the Department focused on a relevant market smaller than city-pairs, with the single exception of the Texas Air-Eastern merger case which involved a unique and highly entry-restricted shuttle operation involving two high density slot controlled airports.

insignificant number of so-called time sensitive passengers traveling between New York and Vienna and New York and Geneva would be involved.

Of course, one could suggest a “relevant market” down to its smallest parameter; such as, for example, passengers who must leave on a Monday and return on a Friday. However, such a reductio ad absurdum approach would not be a proper method for analyzing the competitive impacts of global alliances. Given the global nature of the Alliance, it would be inappropriate for the Department to accept the DOJ's proposed “relevant market”. In fact, as noted above, the Department has twice considered and twice rejected similar DOJ recommendations to define the relevant market to time sensitive business travelers over nonstop city-pair routings. See, NWA-Republic Acquisition Case, Order 86-7-8 1 at 8- 11; TWA-Ozark Acquisition Case, Order 86-9-29 at 2-5.

F. The Alleged Reduction of Competition Involves Only Limited Code-Share/Blocked Space Service That is Not Significantly Different Than the Reduction in Competition By United-Lufthansa in its Non Carve-Out Markets.

The only competition that would allegedly be reduced among the Joint Applicants involves code-share/blocked space service. In none of the New York city-pairs do Delta and its European partner both provide nonstop service with their own aircraft. Rather, one carrier code-shares on a relatively small number of seats on the other carrier's flights under a blocked space arrangement. The number of seats subject to the code-share/blocked space arrangement is relatively small, as the Joint Applicants' previous confidential submissions show.

There is no valid basis to distinguish the United-Lufthansa code-share overlaps from the Delta overlaps merely because one was a code-share and the other involved a blocked space arrangement. The Department described the United-Lufthansa's code-share arrangements as providing "head-to-head price competition":

The current code-share arrangements between [United and Lufthansa] involve fourteen gateway-to-gateway nonstop transatlantic routes, a single **onestop** transatlantic route, and certain other international routes. Although the applicants coordinate on a service and marketing basis, the airlines price their seats independently in competition with each other, in order to maximize their own revenue over these routes. Therefore, United and Lufthansa engage in head-to-head price competition over all these routes.

Order 96-5-12 at 19 (emphasis added):

The Department cannot ignore the inconsistency between DOJ's position with respect to the Delta Alliance on the one hand, and its treatment of the United-Lufthansa city-pairs that were not subject to a carve-out or its treatment of the hub-to-hub overlap in the Northwest-KLM case, on the other hand. The 12 overlap code city-pairs in which United and Lufthansa compete, as to which no immunity carve-out was proposed or required, include several from which United operates major hub **networks**.^{8/} United's domestic operations at those cities are enormous, especially compared to Delta's operations at JFK. Exhibit 3. Moreover, the sizes of the United-Lufthansa city-pairs are not materially different than the sizes of the New York-Europe city-pairs in issue here. Exhibits 5,

^{8/} Chicago-Dusseldorf, Chicago-Munich, New York-Dusseldorf, San Francisco-Frankfurt, Los Angeles-Frankfurt.

7 and 9. Yet, DOJ -- despite its expressed concern about a reduction in competition in “hub” markets -- did not demand that these United-Lufthansa hub city-pairs be excluded from the grant of antitrust immunity. Nor did DOJ demand a carve-out of the Northwest-KLM overlaps in the Minneapolis/St. Paul-Amsterdam or Detroit-Amsterdam city-pairs. These involved major domestic hubs and a reduction of competitors from two to one. It would be highly unfair and inequitable for the Department to adopt DOJ's inconsistent recommendation here, and impose involuntarily a carve-out condition on the New York city-pairs, in the absence of a similar condition on the United-Lufthansa and Northwest-KLM overlap city-pairs.^{9/} Such a result would penalize the Alliance carriers for having chosen a blocked-space rather than a code-share arrangement, even though the Department found both that arrangements involve head-to-head competition.

III. IATA

IATA takes the same position here as it took in opposition to the proposed IATA-withdrawal condition in the United-Lufthansa case. The Department rejected IATA's position and finalized the proposed IATA withdrawal condition in Order 96-5-27. The Joint Applicants take no position with respect to IATA's request other than to strongly urge the Department not to delay issuance of a Final Order approving and immunizing the Alliance Agreements. If the Department chooses to reconsider the issues

^{9/} The Joint Applicants also note that neither DOJ nor the Department required American and CAI to carve out overlap routes (with the exception of New York-Toronto and even there, only until full open skies occurs) even though entry is restricted at Toronto, Montreal and Vancouver and American operates major domestic hubs from nine of the overlap city pairs. Order 96-5-38.

raised by IATA in another proceeding, the Joint Applicants are willing to agree to accept the IATA-withdrawal condition pending such review, so long as all other similarly situated U.S. and foreign carriers are subject to a comparable condition.

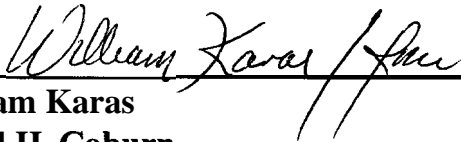
IV. UNITED

United's comment takes no position on the merits of the Show Cause Order. Rather, United filed its comments as a vehicle to cast attention to and ask for favorable consideration of a proposed United-SAS Alliance, for which an application for approval and immunity was filed only three days ago. United's comments should be disregarded. The United-SAS Alliance is completely irrelevant to and has no bearing on this proceeding.

V. CONCLUSION

None of the commentors has submitted any valid justification to warrant a change in the Department's tentative findings and conclusions or to delay the immediate issuance of a Final Order approving and immunizing the Alliance Agreements. DOJ's proposed carve-out of New York-Europe city-pairs, is for the reasons set forth above and in the Show Cause Order, without validity, and should be rejected. The Joint Applicants strongly urge the Department immediately to issue an Order finalizing its tentative findings and conclusions and approving and immunizing the proposed Alliance.

Respectfully submitted,



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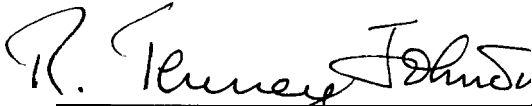
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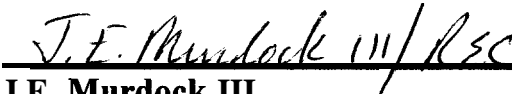
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**COMPARISON OF DOMESTIC JET
FLIGHTS AND SEATS AT NEW YORK**

Exhibit 1

<u>Carrier</u>	<u>Market</u>	<u>Flights</u>			<u>Seats</u>		
		<u>Daily</u>	<u>% Of JFK</u>	<u>% Of JFK/EWR</u>	<u>Daily</u>	<u>% Of JFK</u>	<u>% Of JFK/EWR</u>
Continental	Newark	227	---	24.5%	28,894	---	18.0%
TWA	New York-JFK	47	10.8%	5.1%	6,836	7.6%	4.2%
American	New York-JFK	33	7.6%	3.6%	7,406	8.3%	4.6%
Delta	New York-JFK	27	6.2%	2.9%	4,677	5.2%	2.9%
United	New York-JFK	15	3.5%	1.6%	3,044	3.4%	1.9%

**COMPARISON OF DOMESTIC JET AND CONNECTION
CARRIER COMBINED FLIGHTS AND SEATS AT NEW YORK**

Exhibit 2

<u>Carrier</u>	<u>Market</u>	<u>Flights</u>			<u>Seats</u>		
		<u>Daily</u>	<u>% Of JFK</u>	<u>% Of JFK/EWR</u>	<u>Daily</u>	<u>% Of JFK</u>	<u>% Of J F W E W R</u>
Continental	Newark	354	---	25.4%	34,087	---	19.3%
American	New York-JFK	101	15.3%	7.2%	9,949	10.3%	5.6%
TWA	New York-JFK	97	14.7%	7.0%	8,286	8.5%	4.7%
United	New York-JFK	83	12.6%	5.9%	4,996	5.2%	2.8%
Delta	New York-JFK	53	8.0%	3.8%	5,561	5.7%	3.1%

**COMPARISON OF DELTA JFK
OPERATIONS WITH SELECTED HUBS**

Exhibit 3

<u>Carrier</u>	<u>Market</u>	<u>Daily Flights</u>	<u>Daily Seats</u>
Delta	Atlanta	851	123,185
American	Dallas/Ft. Worth	794	85,657
Delta	Cincinnati	577	64,188
United	Chicago/ORD	550	68,759
USAir	Pittsburgh	533	49,056
TWA	St. Louis	526	49,401
American	Chicago/ORD	523	60,742
Northwest	Detroit	489	51,747
Northwest	Minneapolis/St. Paul	486	49,742
USAir	Charlotte	484	45,768
United	Denver	447	48,009
Continental	Houston/IAH	444	46,984
Continental	Newark	354	34,087
United	San Francisco	342	41,068
Delta	Salt Lake City	318	45,454
United	Los Angeles	291	30,462
Delta	Dallas/Ft. Worth	270	34,345

Delta	New York/JFK	68	8,753
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**SIMILARLY SIZED NYC-EUROPE CITYPAIRS TO
NYC-BRUSSELS/GENEVA/VIENNA/ZURICH WITH AT
LEAST TWO CARRIERS SERVING THE MARKET**

Exhibit 4

<u>Other Similar-Sized Markets</u>	<u>Annual Passengers (000)</u>	<u>Carriers serving The Market</u>
New York-Madrid		Continental/TWA/Iberia/Air Europa
New York-Milan		Delta/Alitalia/Continental/TWA
New York-Dublin		Continental/Aer Lingus/World/Delta/Amer. Trans Air
New York-Lisbon		TWA/TAP/Delta
New York-Shannon		Aer Lingus/World/Amer. Trans Air/Delta
New York-Manchester		Continental/British Airways
New York-Moscow		Delta/Aeroflot/Krasnovorsk
New York-Copenhagen		Delta/SAS/United
New York-Budapest		Malev/Delta
New York-Helsinki		Finnair/Delta
 New York-Zurich		
New York-Brussels		
New York-Vienna		
New York-Geneva		

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**OTHER CARRIERS THAT HAVE SERVED NEW YORK
TO BRUSSELS, GENEVA, VIENNA, AND ZURICH**

Exhibit 5

<u>Market</u>	<u>Carriers</u> That Have Served <u>The Market</u>
New York-Brussels	American Biman People Express Singapore TWA Turkish
New York-Geneva	TWA
New York-Vienna	Malev Royal Jordanian Tarom TWA
New York-Zurich	American El Al TWA

**DELTA'S LIMITED DOMESTIC SERVICE AT JFK
DOES NOT CONSTITUTE A COMESTIC HUB OF ANY MAGNITUDE**

<u>Delta Hub</u>	<u>Daily Domestic Flights</u>	<u>Daily Domestic Seats</u>
Atlanta	545	89,037
Cincinnati	213	3 1,764
Salt Lake City	168	27,622
Dallas/Ft. Worth	142	22,450
<hr/>		
Delta at New York/JFK	27	4,677

**COMPARISON OF THE NYC-EUROPE DELTA ALLIANCE
CITYPAIRS WITH OTHER CARRIER ALLIANCE MARKETS
THAT ARE NOT SUBJECT TO AN IMMUNITY CARVEOUT**

Exhibit 7

<u>Market</u>	<u>#Of</u> <u>Nonstop Carriers</u>	<u>Annual</u> <u>Passengers</u> <u>(000)</u>
Memphis-Amsterdam	1	
Chicago-Dusseldorf	1	
Minneapolis-Amsterdam	1	
Detroit-Amsterdam	1	
Chicago-Munich	1	
Dallas/Ft. Worth-Frankfurt	2	
Atlanta-Frankfurt	2	
Boston-Frankfurt	2	
New York-Geneva	1	
New York-Vienna	1	
Newark-Frankfurt	2	
New York-Brussels	2	
New York-Zurich	2	
Miami-Frankfurt	2	
San Francisco-Frankfurt	1	
Los Angeles-Frankfurt	3	

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**DELTA'S SINGLE PLANE SERVICES IN
THE ATLANTA-SALT LAKE CITY MARKET**

Exhibit 8

Single Coupon <u>Routing</u>	<u>Westbound ATL-SLC</u>		<u>Eastbound SLC-ATL</u>	
		% Of		% Of
	<u>Flights</u>	<u>Total</u>	<u>Flights</u>	<u>Total</u>
Nonstop	7	53.8%	6	60.0%
One-stop	5	38.5%	3	30.0%
<u>Two-stop</u>	<u>1</u>	7.7%	<u>1</u>	10.0%
Total	13		10	

**COMPARISON OF THE DELTA ALLIANCE NYC-EUROPE
CITY PAIRS WITH UNITED/LUFTHANSA OVERLAP MARKETS
THAT ARE NOT SUBJECT TO AN IMMUNITY CARVEOUT**

<u>Markets</u>	Annual Passengers (000)
Los Angeles-Frankfurt	
San Francisco-Frankfurt	
Miami-Frankfurt	
New York-Zurich	
New York-Brussels	
New York-Dusseldorf	
New York-Vienna	
New York-Geneva	
Chicago-Munich	
Chicago-Dusseldorf	

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**OTHER U.S. CARRIERS PROVIDING
INTERNATIONAL FLIGHTS AT NEW YORK**

Exhibit 10

Carrier

American

American Trans Air

Continental

Northwest

Tower

TWA

United

World

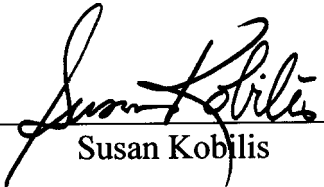
**THE ADDITION OF THE PROPOSED EUROPEAN
ALLIANCE CARRIERS DOES NOT SIGNIFICANTLY
CHANGE DELTA'S SMALL OVERALL SHARE AT NEW YORK**

Exhibit 11

<u>Carrier</u>	<u>Market</u>	<u>Flights</u>		<u>Seats</u>	
		<u>Daily</u>	<u>% of Total</u>	<u>Daily</u>	<u>% of Total</u>
Delta	JFK/Newark	101	7.2%	12,746	7.2%
Austrian/Sabena/Swissair	JFK/Newark	6	0.4%	1,639	0.9%
Combined (DL/OS/SN/SR)	JFK/Newark	107	7.7%	14,385	8.1%

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer of the Joint Applicants to Comments on Order to Show Cause was served this 31st day of May, 1996, on all persons listed on the attached service list.



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